rights.[6] Some jurisdictions in the United States have decisions to the same effect.[7]

It is true that although the landowner has a property right, the state may absolutely suspend it by the exercise of its police power in order to preserve a necessary food supply. Under such circumstances, however, the inherent right would still exist and would revive the moment the restriction were removed, and the law would bear equally upon all. But if the landowner has only a revocable license, the state could withdraw the privilege arbitrarily from all or any, and could grant it again to a few, with or without charge. Public policy alone should forbid the adoption of a rule making possible so rude a departure from established practice.

CHARACTER OF THIRD PERSONS AS EVIDENCE OF THEIR ACTS. — Whatever may be the probative value of character evidence in general, it is usually inadmissible where offered merely to prove or disprove an act.[1] This rule, however, is not without exceptions. Thus, the accused in criminal trials is permitted to offer evidence of his good character, although the prosecution may attack his character only in rebuttal. And in certain cases where the act of a person not a party to the suit becomes material, established usage sanctions the admission of character evidence. In statutory prosecution for adultery, for instance, evidence of the moral character of the person with whom the defendant is alleged to have committed the act, is held admissible.[2] And when bastardy is in issue, the character of the mother may be shown.[3] Similarly, evidence of the character of animals is held competent as bearing on the commission by them of alleged vicious acts.[4] In homicide cases, where the plea is self-defense, it has been said that evidence of the character of the deceased is admissible to support testimony that he actually attacked the defendant.[5] There are many *dicta* and a few decisions to this effect. The majority of courts, however, still emphasize the necessity of proving the defendant's knowledge of the character of the deceased, which would indicate that such evidence is admissible only to show reasonable apprehension on the part of the accused.[6]

A late Texas case is typical of the tendency of some courts to extend the scope of these exceptions. The defendant, for the purpose of reducing a homicide to murder in the second degree, testified that he had found the deceased in adultery with his wife, the daughter of the deceased. The court admitted evidence of the vicious character of the deceased as tending to show the offense charged against him. *Orange* v. *State*, 83 S. W.

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[6] Venning *v.* Steadman, 9 Can. Supreme Ct. R. 206.

[7] Payne *v.* Sheets, 55 Atl. Rep. 656 (Vt.).

[1] Thayer, Prel. Treat. Ev. 525.

[2] Blackman *v.* State, 36 Ala. 295; Commonwealth *v.* Gray, 129 Mass. 474. But see Guinn *v.* State, 65 S. W. Rep. 376 (Tex.).

[3] Pendrell *v.* Pendrell, 2 Stra. 924; Fall *v.* Overseers, etc., Augusta Co., 3 Munf. (Va.) 495.

[4] Broderick *v.* Higginson, 169 Mass. 482. Compare also with the foregoing exceptions, Rowt's Adm'r *v.* Kile's Adm'r, Gilmer (Va) 202; Marble *v.* Marble, 36 Mich. 386.

[5] Wigmore, Gr. Ev. 38; 1 Wigmore, Ev. 63, and cases cited. *Cf.* Chase *v.* State, 46 Miss. 683.

[6] De Arman *v.* State, 71 Ala. 351; State *v.* Hensley, 94 N. C. 1021; People *v.* Rodawald, 177 N. Y. 408.

Rep. 385. If such free use of character evidence is well founded, the transition is easy to a general exception allowing evidence of the character of third persons whenever it is material.[7] If, on the other hand, the general rule is grounded in experience and justice, its application ought not to be further limited. While good character has a material, though uncertain, value in disproving a depraved act, bad character is of less weight in proving the commission of a particular act. The fact that a man is capable of a certain crime tends only remotely to show that he was actually committing it at a particular time. Moreover, character evidence is likely to be colored by individual prejudice, and it is also of so vague a nature and so difficult to test by cross-examination, that it may go to the jury unshaken, though manufactured to suit the needs of the case. Obviously, too, although the degradation of the person injured has no bearing upon the degree of the defendant's crime, it is hardly possible that the jury's estimate of his guilt will not be influenced by it. Because of the inherent weakness of character evidence, and the unwarranted effect it is likely to have on the jury, it would appear to be the safer course to adhere to the general rule, save in the cases where precedent has established exceptions.

PAYMENT INTO COURT AS AN ADMISSION OF LIABILITY. — When payment into court by a defendant was first allowed, the money was brought in under a rule of court, that, unless the plaintiff accepted it in discharge of his claim, the amount should be struck from the declaration.[1] By the General Rules of Trinity Term, 1 Vict.,[2] however, it was provided that such payment should in all cases be pleaded. It had already been decided that a tender could not be pleaded concurrently with a denial of liability on the same cause of action,[3] although the pleading of inconsistent defenses was permissible at the discretion of the court.[4] On the same principle, it was now held that payment into court could not be pleaded in conjunction with a denial of the cause of action thereby admitted.[5] This remained the rule, until a decision under the Judicature Acts of 1873 and 1875[6] effected the radical change of allowing the plea of payment into court concurrently with any defense denying the cause of action. The decision might at first appear a necessary consequence of the new statutes stripping the court of its discretionary powers in permitting inconsistent defenses; but this view disregards the fundamental question, whether a proceeding which amounts to conclusive admission of the right of action can properly be termed a defense at all, though, by a technical rule of procedure, it appears on the record as a plea. On this latter reasoning the court in an early Massachusetts case[7] summarily disposed of the contention that to refuse a defendant who had paid money into court the right to deny the cause of action would be to violate the statute allowing inconsistent defenses. The case is in accord

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[7] 1 Wigmore, Ev. 68.

[1] See 1 Tidd's Pr., 6th ed., 650. The New Jersey practice would appear to be the same. See Levan *v.* Sternfeld, 55 N. J. Law 41.

[2] See 3 Chitty, Pr. 577.

[3] Maclellan *v.* Howard, 4 T. R. 194; Jenkins *v.* Edwards, 5 T. R. 97.

[4] St. 4 Anne, c. xvi. § 4.

[5] Thompson *v.* Jackson, 1 Man. & G. 242.

[6] Berdan *v.* Greenwood, 3 Ex. D. 251. Followed, and the rule extended to the plea of truth in an action for libel in Hawkesley *v.* Bradshaw, 5 Q. B. D. 302.

[7] Bacon *v.* Charlton, 61 Mass. 581.